



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: August 21, 2015

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002569

[REDACTED]

Dear [REDACTED],

On July 9, 2015 your authorized representative appeared by telephone at a hearing on your request for a special enrollment period.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(b).

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

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Decision

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NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000002569

[REDACTED]

Issue

The issue presented for review by the Appeals Unit of the NY State of Health is:

Did the Marketplace properly determine that you were not eligible for a special enrollment period in order to change qualified health plans?

Procedural History

On January 21, 2015, the Marketplace issued an eligibility determination notice stating that you and your spouse are eligible to purchase a qualified health plan at full cost through the Marketplace effective March 1, 2015.

On the same day the Marketplace issued an enrollment confirmation notice stating that you and your spouse have been enrolled in Select Care Gold, Gold, ST, INN Dep25 and could start as early as March 1, 2015.

On March 20, 2015, the Marketplace issued a notice stating that "you are either no longer eligible to receive or have elected to decline health insurance coverage through the Small Business Marketplace."

On April 23, 2015, you spoke to the Marketplace Account Review Unit and requested an appeal insofar as being denied a special enrollment period.

On July 9, 2015, your authorized representative, [REDACTED], had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. The record was developed during the hearing and closed at the end of the hearing.

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Findings of Fact

A review of the record supports the following findings of fact:

1. You and your spouse enrolled in Select Care Gold, Gold, ST, INN Dep25 Health Plan (Emblem Health) on January 21, 2015 (1/27/2015 Marketplace notice).
2. On March 20, 2015, the Marketplace issued a notice stating that “you are either no longer eligible to receive or have elected to decline health insurance coverage through the Small Business Marketplace.” The insurance was terminated on February 28, 2015 (3/20/2015 Marketplace notice).
3. You and your spouse had health insurance through the Marketplace’s Small Business Marketplace. However, you had to separate with your employer and no longer qualified for insurance through the Small Business Marketplace (Testimony).
4. On March 24, 2015, you found out your physician does not accept the insurance you selected through the Marketplace (Testimony).
5. On March 27, 2015, you contacted the Marketplace to change qualified health plans (Testimony).
6. On April 23, 2015, you contacted the Marketplace and were told that your request to change qualified health plans was denied (Testimony).
7. On May 29, 2015, you uploaded a statement from your physician stating that he does not accept the insurance you are currently enrolled in.
8. It is medical necessity that you and your spouse be allowed to change health plans (Testimony).
9. No notice of eligibility determination has been issued by the Marketplace for denying you a special enrollment period.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

The Marketplace Appeals Unit must review each appeal de novo and “consider all relevant facts and evidence adduced during the appeals process” (45 CFR § 155.535(f)). “*De novo review* means a review of an appeal without deference to prior decisions in the case” (45 CFR § 155.500).

The Marketplace is required to provide “timely written notice to an applicant of any eligibility determination” made pursuant to 45 CFR Part 155, Subpart D, which sets out requirements for functions in the Individual Marketplace (45 CFR § 155.310(g)). An applicant or enrollee has the right to appeal an eligibility determination or redetermination or a failure by the Marketplace to provide timely notice of eligibility determination (45 CFR § 155.505(b)).

The Marketplace must provide an annual open enrollment period during which qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR § 155.410(a)). The open enrollment period for the benefit year beginning on January 1, 2015 during which a qualified individual may enroll in a QHP and enrollees may change QHPs begins on November 15, 2014 and extends through February 15, 2015 (45 CFR § 155.410(e)).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP and an enrollee may change to another QHP. A special enrollment period may be permitted when one of the following triggering events occurs:

- 1) The qualified individual or his or her dependent
 - i) loses health insurance considered to be minimum essential coverage
 - ii) is enrolled in a non-calendar-year health insurance policy that will expire in 2015, even if they have the option to renew the policy
 - iii) loses pregnancy-related coverage
 - iv) loses medically needy coverage,
- 2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care,

- 3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status,
- 4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange,
- 5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee,
- 6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions,
- 7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move,
- 8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month,
- 9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide, or
- 10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

When an individual or his or her dependent loses minimum essential coverage, the date of the loss of coverage is the last day the consumer would have coverage under their previous plan (45 CFR § 155.420(d)(1)(i)).

A qualified individual or his or her dependent loses minimum essential coverage has 60 days before and after the triggering event to select a QHP (45 CFR § 155.420(c)(2)).

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Legal Analysis

The record does not contain a notice of eligibility determination or redetermination on the issue of a special enrollment period (SEP). It does, however, contain an April 24, 2015 notice in which the Marketplace acknowledges receipt of an appeal request and identifies the issue on appeal as "Consumer is requesting to change their health plan due to their PCP not accepting Emblem health."

The lack of a notice of eligibility determination on the issue of SEP does not prevent the Appeals Unit from reaching the merits of the case. Under 45 CFR §

155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the April 24, 2015 notice, which acknowledges the appeal on the issue of SEP denial, permits an inference that the Marketplace did deny your SEP request. Since Appeal Unit review of Marketplace determinations is performed on a *de novo* basis, no deference would have been granted to the notice of eligibility determination had it been issued.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015. The record indicates that during the open enrollment period you and your spouse enrolled in the Select Care Gold, Gold, ST, INN Dep25 and could start as early as March 1, 2015.

Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to change to another health plan offered in the Marketplace.

In certain circumstances, a special enrollment period is granted to individuals so that they may enroll in a qualified health plan outside of the open enrollment period if the individual experiences a triggering event. Loss of minimum essential health insurance may be considered a triggering event for purposes of being granted a special enrollment period.

The record supports that you and your spouse were enrolled in a health insurance plan through the Small Business Marketplace. However, that plan was terminated effective February 28, 2015 because you no longer qualified to receive health insurance through the Small Business Marketplace.

Once your health plan through the Small Business Marketplace terminated effective February 28, 2015, you and your family had 60 days to enroll or change health plans.

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Based on the credible record, you contacted the Marketplace to change health plans on March 27, 2015 and were told that your request to change qualified health plans was denied on April 23, 2015.

Since there is sufficient evidence in the record that confirms that you attempted to change health plans within the 60-day period, you were within the eligible period to change your and your spouse's health plan.

Decision

The Marketplace's determination to deny you a special enrollment is **RESCINDED**.

You and your spouse have 60 days from the date of this decision to change the qualified health plan you are currently enrolled in.

Effective Date of this Decision: August 21, 2015

How this Decision Affects Your Eligibility

You and your spouse have 60 days from the date of this decision to change the qualified health plan you are currently enrolled in.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months after the date of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c))

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

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If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

Summary

The Marketplace's determination to deny you a special enrollment is **RESCINDED**.

You and your spouse have 60 days from the date of this decision to change the qualified health plan you are currently enrolled in.

Legal Authority

We are sending you this notice in accordance with Federal regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To



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